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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/643,551	08/22/2000	Richard C. Robertshaw	567P	9686

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EXAMINER

VU, STEPHEN A

ART UNIT	PAPER NUMBER
3636	

DATE MAILED: 04/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 09/643,551	Applicant(s) Robertshaw
Examiner Stephen Vu	Art Unit 3636



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on Jan 23, 2002.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) Claim(s) 5-9 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 5-9 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are objected to by the Examiner.

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) Notice of References Cited (PTO-892) 18) Interview Summary (PTO-413) Paper No(s). _____
- 16) Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) Notice of Informal Patent Application (PTO-152)
- 17) Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2 20) Other: _____

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DETAILED ACTION

Election/Restriction

1. Applicant's election without traverse of Group I in Paper No. 4 is acknowledged. Please note that new claims 5-8 are also directed to the non-elected species. This is adverse to the intent of the election of species requirement.

Claim Rejections - 35 USC § 112

2. Claims 5-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 5, line 9, the phrase "resilient balls, springs, or magnets" renders the claim indefinite, because the resulting claim does not clearly set forth the metes and bounds of the patent protection desired.

3. In claim 6, lines 2-3, the phrase "resilient means includes at least two balls, two round springs or two magnetic supports" renders the claim indefinite, because the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. The limitation recites "the right and left side" in line 4. There is insufficient antecedent basis for this limitation in the claim. It is unclear if this refers to the pad or the cushion.

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In claim 7, line 2, the phrase “rubber balls or springs” renders the claim indefinite, because the resulting claim does not clearly set forth the metes and bounds of the patent protection desired.

In claim 8, line 2, the phrase “three set of balls, springs or magnets” renders the claim indefinite, because the resulting claim does not clearly set forth the metes and bounds of the patent protection desired.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 5-6 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Berg et al'127.

Berg et al'127 show a chair seat and standing apparatus (10) comprising a pair of pads (62,72) and resilient means (16,20,26,30) positioned below the pad. The resilient means are resilient balls.

With claim 6, the pair of pads have two cushions (64,74). There are at least two balls (16,20,26,30).

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Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berg et al'127 in view of Poppe.

Berg et al'127 discloses the claimed invention except for placing one to three balls in a forward section, two to three in a center, and two to three in a back section of the apparatus. Poppe teaches a platform comprising the placement of multiple elastic springy elements (5) at the forward, center, and back sections of the platform. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place from one to three balls in a forward section, two to three in a center, and two to three in a back section of Berg et al'127's

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apparatus as taught by Poppe, in order to provide an evenly distributing support to the person's bottom section.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Jolley, Ottiger et al, Propst et al, Knittel et al, Grundeit et al, Berg, Berg et al'782, and Sklar are cited as showing similar types of apparatus.
10. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Stephen Vu, whose telephone number is (703) 308-1378.


Stephen Vu
Patent Examiner
April 10, 2002


Peter M. Cuomo
Supervisory Patent Examiner
Technology Center 3600